

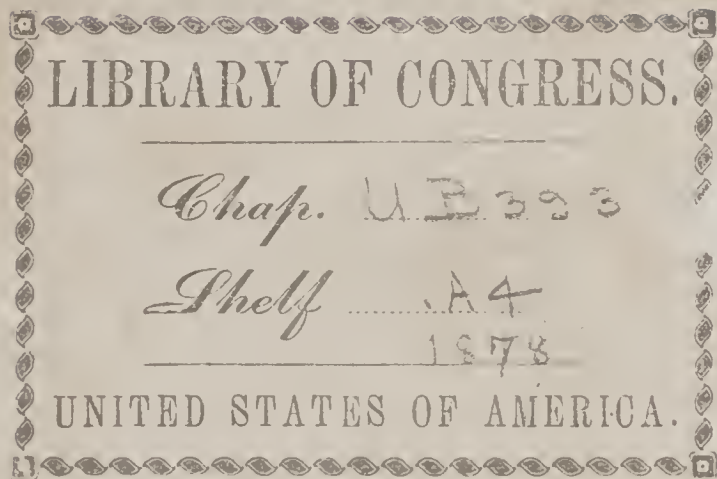
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COMPILATION

OF

LAWS, ORDERS, OPINIONS, INSTRUCTIONS, ETC.,

IN REGARD TO

NATIONAL MILITARY CEMETERIES.

WAR DEPARTMENT,
QUARTERMASTER-GENERAL'S OFFICE,
Washington, D. C., June 22, 1878.



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WAR DEPARTMENT,
QUARTERMASTER-GENERAL'S OFFICE,
Washington, D. C., June 22, 1878.

The following compilation of laws, orders, opinions, instructions, &c., in regard to National Military Cemeteries, is published for the information of all concerned.

All orders or general instructions which may hereafter be issued concerning National Cemeteries will be noted in their proper places in the blank leaves inserted for that purpose.

M. C. MEIGS,
Quartermaster-General,
Brevet Major-General, U. S. Army.

NATIONAL MILITARY CEMETERIES.

ESTABLISHMENT.

The President of the United States shall have power, whenever in his opinion it shall be expedient, to purchase cemetery grounds, and cause them to be securely inclosed, to be used as a National Cemetery for the soldiers who shall die in the service of the country. (Section 18 of act approved July 17, 1862. G. O. 91, A. G. O., 1862.)

Resolved, &c., That the Secretary of War be, and he is hereby, authorized and required to take immediate measures to preserve from desecration the graves of the soldiers of the United States who fell in battle or died of disease in the field and in hospital during the war of the rebellion; to secure suitable burial-places in which they may be properly interred, and to have the grounds inclosed, so that the resting-places of the honored dead may be kept sacred forever. (Approved April 13, 1866. G. O. 62, A. G. O., 1866.)

Be it enacted, &c., That in the arrangement of the National Cemeteries established for the burial of deceased soldiers and sailors, the Secretary of War is hereby directed to have the same inclosed with a good and substantial stone or iron fence; and to cause each grave to be marked with a small headstone, or block, with the

number of the grave inscribed thereon, corresponding with the number opposite to the name of the party, in a register of burials to be kept at each cemetery and at the office of the Quartermaster-General, which shall set forth the name, rank, company, regiment, and date of death of the officer or soldier; or, if unknown, it shall be so recorded.

SEC. 2. *And be it further enacted*, That the Secretary of War is hereby directed to cause to be erected at the principal entrance of each of the National Cemeteries aforesaid a suitable building to be occupied as a porter's lodge; and it shall be his duty to appoint a meritorious and trustworthy superintendent, who shall be selected from enlisted men of the Army disabled in service, * * * to reside therein, for the purpose of guarding and protecting the cemetery, and giving information to parties visiting the same. (Act approved February 22, 1867. G. O. 8, A. G. O., 1867.)

Be it enacted, &c., That the President of the United States is authorized to provide, out of the ordinary annual appropriations for establishing and maintaining United States Military Cemeteries, for the proper care and preservation and maintenance of the cemetery or burial-ground near the city of Mexico, in which are interred the remains of officers and soldiers of the United States, and of citizens of the United States, who fell in battle, or died in and around said city; and that this cemetery shall be subject to the rules and regulations affecting United States National Military Cemeteries within the limits of the United States, so far as they may, in the opinion of the President, be applicable thereto. (Approved March 3, 1873. G. O. 47, A. G. O., 1873.)

The Secretary of War shall provide for the care and maintenance of the National Military Cemeteries and for this purpose shall submit an estimate with his annual estimates to Congress, and section 4876 of the Revised Statutes is hereby repealed.* (Act approved July 24, 1876. G. O. 70, A. G. O., 1876.)

* *The section repealed reads as follows :* "The Secretary of War shall detail some officer of the Army, not under the rank of major, to visit annually all of the National Cemeteries, and to inspect and report to him the condition of the same, and the amount of money necessary to protect them, to sod the graves, gravel and grade the walks and avenues, and to keep the grounds in complete order; and the Secretary shall transmit such report to Congress at the commencement of each session, together with an estimate of the appropriation necessary for that purpose."

ACQUIREMENT OF LAND, PREPARATION OF TITLE-PAPERS, AND JURISDICTION.

SEC. 4. (Act of February 22, 1867.) *And be it further enacted*, That it shall be the duty of the Secretary of War to purchase from the owner or owners thereof, at such price as may be mutually agreed upon between the Secretary and such owner or owners, such real estate as in his judgment is suitable and necessary for the purpose of carrying into effect the provisions of this act, and to obtain from said owner or owners title in fee-simple for the same. And in case the Secretary of War shall not be able to agree with said owner or owners upon the price to be paid for any real estate needed for the purpose of this act, or to obtain from said owner or owners title in fee-simple for the same, the Secretary of War is hereby authorized to enter upon and appropriate any real estate which, in his judgment, is suitable and necessary for the purposes of this act.

SEC. 5. *And be it further enacted*, That the Secretary of War, or the owner or owners of any real estate thus entered upon and appropriated, are hereby authorized to make application for an appraisement of said real estate thus entered upon and appropriated to any district or circuit court within any State or district where such real estate is situated; and any of said courts is hereby authorized and required, upon such application, and in such mode and under such rules and regulations

as it may adopt, to make a just and equitable appraisement of the cash value of the several interests of each and every owner of the real estate and improvements thereon entered upon and appropriated for the purposes of this act, and in accordance with its provisions.

SEC. 6. *And be it further enacted*, That the fee-simple of all real estate thus entered upon and appropriated for the purposes of this act, and of which appraisement shall have been made under the order and direction of any of said courts, shall upon payment to the owner or owners, respectively, of the appraised value, or in case said owner or owners refuse or neglect for thirty days after the appraisement of the cash value of the said real estate or improvements by any of said courts, to demand the same from the Secretary of War, upon depositing the said appraised value in the said court, making such appraisement to the credit of said owner or owners, respectively, be vested in the United States, and its jurisdiction over said real estate shall be exclusive, and the same as its jurisdiction over real estate purchased, ceded, or appropriated for the purposes of navy-yards, forts, and arsenals. And the Secretary of War is hereby authorized and required to pay to the several owner or owners, respectively, the appraised value of the several pieces or parcels of real estate, as specified in the appraisement of any of said courts, or to pay into any of said courts by deposit, as hereinbefore provided, the said appraised value; and the sum necessary for such purpose may be taken from any moneys appropriated for the purposes of this act.

ATTORNEY-GENERAL'S OFFICE,
June 4, 1857.

The following regulations have been prepared for the convenience of those who may have occasion to draw conveyances, make abstracts, or collect evidence of title to lands, in cases where it may be the duty of this office to certify concerning the validity of title. A strict observance of them will greatly facilitate the examination, as well as tend to correct conclusions :

I. The deed from the vendor to the United States and their assigns must be acknowledged according to the laws of the State, District, or Territory where the land lies.

II. A plot or draught of the land should be furnished, showing the boundary-lines, their courses and distances, and the adjoining owners, streets, rivers, or other waters.

III. Where the property proposed to be sold consists of more than one piece, the titles to which are derived through different persons, the dividing-lines must be traced on the draught, and the separate pieces distinctly marked.

IV. It is necessary to have an accurate and full abstract of the title, showing its transmission from the original source to the vendor, with each transfer noted in the proper order of time, the name of each grantor and grantee written at length, with dates showing when the several conveyances were executed, acknowledged, and recorded. This abstract must note every fact on which the validity of the title depends, whether it be proved by matter of record, by deed, or *en pais*.

V. The abstract must be verified by being accompanied either with the original documents it refers to or else with copies legally authenticated.

VI. The title-papers must all be marked with numbers corresponding to the numbers under which they are arranged in the abstract.

VII. When an estate in the land has passed by devise, the will and the probate must be shown, and if the devisee is not named, proof of his identity will be required.

VIII. Where it has descended from an intestate ancestor to his heirs, satisfactory proof of the condition and number of the decedent's family must be given.

IX. If the estate has passed by a judicial sale, or by a sale under the order of any court, or if it has been divided by proceedings in partition, the regularity of the sale or partition must be shown by a copy of the record.

X. The foreclosure of a mortgage can be shown only by an authentic copy of the proceedings had for that purpose.

XI. When the wife of a grantor has not joined in a deed, some evidence must be given that he was unmarried at the time, or that his wife is since dead.

XII. If the grantor be a woman, it must be shown that she was unmarried at the date of the deed from her.

XIII. When a deed is executed by the heirs of a person within twenty-one years after his death, evidence will be required to show that they were of full age at the time of the grant.

XIV. When the title has passed through a corporate body, the charter must be produced, and the authority of the officer who granted away the estate must be shown.

XV. When the estate has been conditional, it will be necessary to furnish clear proof that the conditions have been fulfilled or lawfully excused.

XVI. When the title depends on statute law, other than the public laws of the United States; upon a local law differing from the general rule of the common law; upon a public document, or upon history, the books relied on to establish it should be accurately referred to, and the page noted.

XVII. Presumptions arising from lapse of time will be allowed the weight given to them by the judicial tribunals of the State where the land lies. An apparent defect in an old deed need not be explained if the possession of the property has been according to such deed for thirty years or upwards.

XVIII. A title offered to the United States will not be regarded as invalid on account of an outstanding title which has been barred by a legal limitation. But in all cases where time is relied on to extinguish an outstanding title, the party must show, by clear proof, not only an adverse possession for the full period, but also that there are no persons who have rights that may be saved by exceptions to the statute.

XIX. Before sending the papers to this office for examination, they should be submitted to the attorney of the United States for the district in which the land lies. It will be his duty to certify an opinion on the whole title, and to state particularly whether the local laws are correctly given, the papers properly authenticated, and the facts established by satisfactory proof.

Very respectfully,

J. S. BLACK.

(G. O. 33, Q. M. G. O., 1866.)

QUARTERMASTER-GENERAL'S OFFICE,
Washington, D. C., May 7, 1869.

GENERAL: I have the honor to submit herewith the act of Congress entitled "An act to establish and protect National Cemeteries," approved February 22, 1867 (re-published in General Orders No. 14, Quartermaster-General's Office, March 7, 1867), and request that I be informed relative to the exact construction of some of the provisions contained therein.

I have the honor further to invite your attention to article 1, section 8, paragraph 16, of the Constitution of the United States, by which it is provided that "Congress shall have power to exercise exclusive legislation in all cases whatsoever over such district, not exceeding ten miles square, as may by cession of particular States and the acceptance of Congress be the seat of government of the United States; and to exercise like authority over all places purchased by the consent of the legislature of the State in which the same shall be, for the erection of forts, magazines, arsenals, dock-yards, and other needful buildings."

By joint resolution of Congress, approved September 11, 1841, it was made the duty of the Attorney-General of the United States to "examine into the titles of the lands or sites, which have been purchased by the United States for the purpose of erecting thereon armories, arsenals, forts, fortifications, navy-yards, custom-houses, light-houses, or other public buildings of any kind whatever, and report his opinion as to the validity of the title in each case to the President of the United States."

That resolution further provides that no public money shall be expended upon any site or land thereafter to be purchased by the United States for the purposes afore-

said, until the written opinion of the Attorney-General shall have been had in favor of the validity of the title, and also the consent of the legislature of the State in which the land or site may be, shall be given to the purchase.

It will be observed that National Cemeteries are not enumerated among the class of public lands and buildings which require "cession of jurisdiction" by the legislature of the State in which the land is located. Nor does the joint resolution of September 11, 1841, require the title-papers to be furnished to the Attorney-General for his opinion for lands or sites purchased for National Cemeteries, or consent to be had of the legislature of the State in which they are located, unless "cemeteries" are interpreted as "*land for public buildings of any kind whatever.*"

If National Cemeteries are to come within the article of the Constitution and the joint resolution referred to above, the act of Congress of February 22, 1867, which enacts, in the sixth section thereof, that "the fee-simple of all real estate thus entered upon and appropriated for the purposes of this act, and of which appraisements shall have been made under the order and direction of any of the said courts, shall, upon payment to the owner or owners, respectively, of the appraised value, or in case said owner or owners refuse or neglect for thirty days after the appraisement of the cash value of the said real estate or improvements by any of said courts to demand the same from the Secretary of War, upon depositing the said appraised value in the said court, making such appraisement to the credit of said owner or owners, respectively, be vested in the United States; and its jurisdiction over said real estate shall be

exclusive, and the same as its jurisdiction over real estate purchased, ceded, or appropriated for the purposes of navy-yards, forts, and arsenals"; appears to be inconsistent with the provisions of the Constitution, which require the legislative action of the States to cede jurisdiction to the United States.

I have the honor further to report that heretofore, in all instances where sites or lands have been purchased or appraised for the purpose of establishing thereon National Cemeteries, the title-papers have always been transmitted to the honorable Attorney-General of the United States for his opinion, prior to the consummation of the purchase, and that in all cases where a cession of jurisdiction to the United States from the State legislature could be procured, the same has been obtained prior to the payment of the purchase-money to the former owner or owners. In some of the States, late in rebellion, such cession of jurisdiction cannot be had, as no legislatures are in session, nor will any be in session until the States shall have been readmitted into the Union. On two occasions the honorable Secretary of War authorized the payment of the purchase-money in advance of the cession of jurisdiction by the legislature of the State of Mississippi, viz, at the National Cemeteries at Corinth and Natchez. (In these two cases the constitutional convention of Mississippi ceded the jurisdiction over the lands to the United States, but the honorable Attorney-General, to whom the papers were referred for his opinion, returned them, stating that the cession granted by the constitutional convention was not considered a valid "consent by the State legislature," as required by law.)

The purchase-money has also in some few instances

been paid to the owners of sites or lands entered upon and appropriated by the United States for National Cemeteries upon appraisement having been made by direction of the court, agreeably to the provisions of the act of February 22, 1867, without further cession of jurisdiction to the United States having been granted than that intimated in the said act.

I respectfully request to be instructed as to whether it will hereafter be necessary to transmit the title-papers to National Cemeteries to the honorable Attorney-General for his opinion and to await a cession of jurisdiction by the State legislatures prior to consummating the purchases of lands or sites for National Cemeteries.

I am, general, very respectfully, your obedient servant,

ALEX. J. PERRY,
Brevet Brigadier-General and
Quartermaster, U. S. Army.

Brevet Major-General M. C. MEIGS,
Quartermaster-General, Washington, D. C.

QUARTERMASTER-GENERAL'S OFFICE,
Washington, D. C., May 13, 1869.

SIR: I have the honor to submit herewith a report of Brevet Brigadier-General A. J. Perry, quartermaster, United States Army, on duty in this office in charge of the cemeterial branch, dated May 7, 1869, comparing various provisions of the Constitution, the joint resolution of September 11, 1841, and act of Congress of February 22, 1867; and requesting information as to their exact construction.

I am of the opinion that no exclusive jurisdiction can

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inure to the United States over any lands purchased for any purpose without a cession by the State, and in almost all cases for thirty years past the States have refused to cede exclusive jurisdiction, but have retained concurrent jurisdiction and the right to execute process in certain cases.

I have given directions that the title-papers shall, in all cases of purchase, be submitted to the honorable Attorney-General before the payment of the purchase-money, and that his requirements be fulfilled before money is paid.

I respectfully recommend that the question raised as to the effect of the act of Congress and of the Constitution be submitted by the War Department to the honorable Attorney-General of the United States, requesting his advice as to the proceedings had or to be had in each class of cases mentioned in the report of General Perry.

I am, sir, very respectfully, your obedient servant,

M. C. MEIGS,

Quartermaster-General,

Brevet Major-General, U. S. Army.

Hon. JOHN A. RAWLINS,

Secretary of War, Washington, D. C.

[Indorsement.]

WAR DEPARTMENT,

BUREAU OF MILITARY JUSTICE,

May 18, 1869.

Respectfully returned to the Secretary of War.

I am of opinion: 1st. That land can legally be purchased for National Cemeteries without a previous consent of or cession of its jurisdiction by the State legis-

lature. 2d. That an act of Congress alone cannot vest the United States with exclusive jurisdiction over land so purchased, but that a formal cession of its own jurisdiction by the State is still necessary. 3d. That, while the Attorney-General may not be required in strict law to furnish an opinion as to the validity of title in the case of National Cemeteries, the reference to him for an opinion in such cases is believed to be proper, as it is of course most desirable, in fact essential, to the complete protection of the government in purchasing.

It is not, however, for me to express a confident opinion in regard to the duties or province of the Attorney-General; and as this is a question upon which he alone can properly pass, and the other questions herein presented are of a grave character, the recommendation that the within papers be referred to him for opinion is concurred in.

J. HOLT,
Judge-Advocate-General.

WAR DEPARTMENT,
May 20, 1869.

SIR: I have the honor to invite your attention to the accompanying letter of the 13th instant, from the Quartermaster-General, and to the extracts from the Constitution and laws of the United States therein cited, and, in connection with the subject of National Cemeteries, to request your opinion upon the following legal points:

Whether the act of February 22, 1867, to establish and protect National Cemeteries, is competent to vest in the United States exclusive jurisdiction over lands acquired for such purposes; whether, under the requirements of the joint resolution of September 11, 1841, the title-papers of such lands are to be submitted to the

honorable Attorney-General for his opinion as to their validity; and whether, under the joint resolution just cited, this department is legally estopped from paying any money for land purchased for cemeterial purposes, until the consent of the State legislature to its acquisition by the United States has been obtained.

Your advice is further solicited as to the best measures to adopt, if any be necessary, to perfect the title and jurisdiction of the United States in those cases where the purchase-money has been paid before the consent of State legislatures could be obtained.

Very respectfully, &c.,

JNO. A. RAWLINS,

Secretary of War.

The Hon. ATTORNEY-GENERAL.

ATTORNEY-GENERAL'S OFFICE,

July 29, 1869.

SIR: I have the honor to acknowledge the receipt of your letter of May 20, 1869, asking my opinion upon several questions therein contained.

The first is, "whether the act of February 22, 1867, to establish and protect National Cemeteries, is competent to vest in the United States exclusive jurisdiction over lands acquired for such purposes."

Section four of that act provides for the purchase, by the Secretary of War, from the owner or owners thereof, at such price as may be mutually agreed upon between the Secretary and such owners, such real estate as, in his judgment, is suitable and necessary for the purpose of carrying into effect the provisions of the act; and in case of failure to agree upon the price to be paid, or to obtain from the owner title in fee-simple for the same,

the Secretary of War is authorized to enter upon and appropriate any real estate which, in his judgment, is suitable and necessary for the purposes of the act. A provision is made in the following section for an appraisement of the value of any real estate thus entered upon and appropriated; and by section six it is enacted, that the fee-simple of all real estate thus entered upon and appropriated, of which appraisement shall have been made, shall, upon payment to the owner or owners of the appraised value, or, in case of their neglect for thirty days to demand the same, upon the appraised value being deposited in the court making such appraisement, "be vested in the United States, and its jurisdiction over said real estate shall be exclusive, and the same as its jurisdiction over real estate purchased, ceded, or appropriated for the purposes of navy-yards, forts, and arsenals."

The only clause in the Constitution of the United States by which Congress is authorized to acquire exclusive jurisdiction over the territory of any part of the separate States of the Union, is found in Article I, section 8, and is in these terms: "The Congress shall have power * * * to exercise exclusive legislation, in all cases whatsoever, over such district (not exceeding ten miles square) as may, by cession of the particular States and the acceptance of Congress, become the seat of the Government of the United States; and to exercise like authority over all places purchased by the consent of the legislature of the State, in which the same shall be, for the erection of forts, magazines, arsenals, dock-yards, and other needful buildings."

I am of opinion that, under this provision of the Constitution, there is no power in Congress to acquire or

assert exclusive jurisdiction over any part of the territory of any State without the consent of the legislature of the State; and that, in order to acquire exclusive jurisdiction over a National Cemetery, the consent of the legislature of the State in which the same is situated must first be obtained. I have no doubt that, as incident to the power of making war, the national government has the power to bury the dead who have fallen in battle, and to appropriate for this purpose such lands as are necessary, to hold such burial places, and to protect them from desecration. If the consent of the legislature of the State in which the burial place is situated can be obtained, I think it might well be held to be included under the terms of the Constitutional provision above cited, and exclusive jurisdiction over it be thus acquired.

Your second and third questions are "whether, under the requirements of the joint resolution of September 11, 1841, the title-papers of such lands are to be submitted to the Attorney-General for his opinion as to their validity"; and "whether, under the joint resolution just cited, this department (the War Department) is legally estopped from paying any money for land purchased for cemeterial purposes, until the consent of the State legislature to its acquisition by the United States has been obtained."

The act of February 22, 1867,* contemplates purchases of lands for all public purposes, and establishes, as a general rule applicable to them, that no public money shall be expended in the purchase until the opinion of the Attorney-General on the validity of the title

* Supposed clerical error for the "Joint resolution September 11, 1841."

shall be obtained and the consent of the legislature of the State in which the lands are situated is given, but no reference is made to the joint resolution of 1841 in the act of 1867, and the subject-matter of the act, as well as some of its provisions, leads me to the conclusion that no reference to the joint resolution was intended. The National Cemeteries had been already practically established in many cases by their relation to the battle-fields of the war. The act provides for taking and holding them without the consent of the owner, and I cannot suppose that it was the intention of Congress that the owner should be deprived of his land without compensation, because the consent of the legislature of the State might not be given to the appropriation of the land to public use by the national authority.

The resolution of 1841 refers only to lands to be purchased by the United States. The statute of 1867 contemplated not only purchase but appropriation, under the right of eminent domain. As, therefore, I do not think that the consent of the legislature of the State in which the lands are situated is necessary to authorize payment for the lands selected for National Cemeteries, it follows that the opinion of the Attorney-General as to the validity of the title to be acquired, the necessity for which depends upon the same section of the resolution of 1841, cannot be considered essential.

But I think it would be highly expedient and proper for the Secretary of War to submit the title to be acquired to lands designated as National Cemeteries to the Attorney-General for his opinion. When money is to be paid, of course the question to whom it is to be paid, that is, the question in whom the title in fee to the land is vested, must always arise, and, for the safety of the

government and to avoid possible controversies among different claimants, it would seem to be expedient that the usual course of investigating titles should be adopted. It is not, however, in this case, in my opinion, absolutely required by law.

You further ask my advice as to the best measures to adopt, if any be necessary, to perfect the title and jurisdiction of the United States in those cases where the purchase-money has been paid before the consent of the State legislatures could be obtained. As the act of 1867 shows that it was the intention of Congress that exclusive jurisdiction over the National Cemeteries should be obtained by the United States, and as I am of the opinion that this can only be acquired by obtaining the consent of the legislatures of the States, I must suppose it to be the intention of Congress that such consent should be asked, and that it would be a proper course for the Secretary of War to apply to the respective legislatures for their consent, the procurement of which would make the act of 1867 completely operative. Such a course was indicated in the sixth section of the joint resolution of 1841 to be adopted in similar cases then existing.

The papers referred to are herewith returned.

Very respectfully, your obedient servant,

E. R. HOAR,

Attorney-General.

Hon. JOHN A. RAWLINS,

Secretary of War.

Be it enacted, &c., That from the time any State legislature shall have given, or shall hereafter give, the consent of such State to the purchase, by the United States, of any National Cemetery mentioned in the act entitled

“An act to establish and protect National Cemeteries,” approved February twenty-second, eighteen hundred and sixty-seven, the jurisdiction and power of legislation of the United States over such cemetery shall, in all courts and places, be held to be the same as is granted by section eight, article one, of the Constitution of the United States; and all the provisions of said act of February twenty-second, eighteen hundred and sixty-seven, shall be applicable to the same.

SEC. 2. *And be it further enacted*, That it shall be the duty of the Secretary of War to cause copies of this present act to be sent to the governors of all such States wherein any of such National Cemeteries may be situated, to the end that the legislatures of such States may give the consent herein mentioned.

(Approved July 1, 1870. G. O. 85, A. G. O., 1870.)

DEPARTMENT OF JUSTICE.

July 29, 1874.

SIR: The following question is proposed by Henry W. Scott, “contractor,” in his letter, dated July 16, 1874, addressed to the Quartermaster-General, which letter was referred to me by you July 24, 1874: “Is property within the inclosure of a United States National Cemetery, to be used for the United States by a contractor on the ground, liable to attachment or levy under any circumstances, without a judgment being first obtained against such contractor?”

From the Quartermaster-General’s indorsement on the letter it appears that the title to the property in question is in the contractor—that the United States has no claim to it.

By the Constitution Congress has power to exercise “exclusive legislation” “in all cases whatsoever” over all places purchased by the consent of the legislature of any State “for the erection of forts, magazines, arsenals, dock-yards, and other needful buildings.” No time need be spent in showing that land purchased for cemeteries is within this provision of the Constitution. The government has decided that these places and the structures on them are “needful.” It was long ago held, and the decision has been acquiesced in, that “exclusive jurisdiction is the attendant upon exclusive legislation,” and that when a State for the purposes mentioned has given its consent to the purchase of land within its limits by the United States, the State’s jurisdiction is completely ousted.—(*United States v. Cornell*, 2*d* *Mason*, 60–63; 1 *Kent Com.*, 429.) It follows in such case that no State process, civil or criminal, can run upon said lands unless there is a special exception or reservation in the cession or in the State’s consent to the purchase.—(1 *Woodbury & Minot*, 76–82.) And it is my opinion that personal property upon lands ceded to the United States without condition is not subject to be levied on by attachment or any other process issued by the authority of the State. It is subject to United States process only. But if, as is usually the case, the State in making the cession or in giving its consent to the purchase reserved the right to serve and execute its process upon the land, or annexed any other like condition, it has been held that the “acceptance of a cession with this reservation amounts to an agreement on the part of the United States to permit the free exercise of such process as being *quoad hoc* its own process”; “and upon any other construction the cession would be nugatory and void.”—(1 *Kent Com.*,

429-30, and the case above cited; 2 *Mas.*, 65, 66; also, *United States v. Davis*, 5 *Mason*, 356.)

I think, therefore, that if the lands of any National Cemetery were ceded or the purchase thereof consented to by the State within whose boundaries they are, with a reservation of "concurrent jurisdiction," or of the right to serve its process on said lands, personal property within the inclosure of such cemetery is liable to be taken by writ of attachment or any other lawful process issued by the authority of said State if the title to the property is in the defendant, whether the contractor for such cemetery or any other person. As the writ of attachment is *mesne* process and precedes judgment the last clause of the question is answered.

I am, sir, very respectfully,

S. F. PHILIPS,

Solicitor-General and Acting Attorney-General.

Hon. WM. W. BELKNAP,

Secretary of War.

CLASSIFICATION.

FIRST CLASS.

(Pay of superintendents \$75 per month.)

Antietam, Md.	Mound City, Ill.
Arlington, Va.	Memphis, Tenn.
Andersonville, Ga.	Marietta, Ga.
Beaufort, S. C.	Nashville, Tenn.
City of Mexico, Mexico.	Natchez, Miss.
Corinth, Miss.	Pittsburg Landing, Tenn.
Camp Nelson, Ky.	Poplar Grove, Va.
Chattanooga, Tenn.	Port Hudson, La.
Chalmette, La.	Richmond, Va.
Fredericksburg, Va.	Salisbury, N. C.
Gettysburg, Pa.	Soldiers' Home, D. C.
Hampton, Va.	Stone River, Tenn.
Jefferson Barracks, Mo.	Vicksburg, Miss.
Little Rock, Ark.	

SECOND CLASS.

(Pay of superintendents \$70 per month.)

Alexandria, Va.	Fort Scott, Kans.
Alexandria, La.	Knoxville, Tenn.
Brownsville, Tex.	Logan's Cross-Roads, Ky.
Baton Rouge, La.	Mobile, Ala.
City Point, Va.	New Berne, N. C.
Culpeper, Va.	Philadelphia, Pa.
Fort Leavenworth, Kans.	Raleigh, N. C.
Fort Smith, Ark.	Wilmington, N. C.
Florence, S. C.	Winchester, Va.

THIRD CLASS.

(Pay of superintendents \$65 per month.)

Annapolis, Md.	Fort Donelson, Tenn.
Barrancas, Fla.	Jefferson City, Mo.
Camp Butler, Ill.	Keokuk, Iowa.
Cold Harbor, Va.	New Albany, Ind.
Danville, Va.	Springfield, Mo.
Fayetteville, Ark.	Yorktown, Va.
Fort Gibson, Ind. T.	

FOURTH CLASS.

(Pay of superintendents \$60 per month.)

Battle Ground, D. C.	Grafton, W. Va.
Ball's Bluff, Va.	Lexington, Ky.
Beverly, N. J.	Laurel, Md.
Cave Hill, Ky.	Lebanon, Ky.
Crown Hill, Ind.	Loudon Park, Md.
Cypress Hills, N. Y.	Rock Island, Ill.
Danville, Ky.	San Antonio, Tex.
Fort Harrison, Va.	Seven Pines, Va.
Flinn's Point, N. J.	Staunton, Va.
Fort McPherson, Nebr.	Woodlawn (Elmira), N. Y.
Glendale, Va.	

G. O. 82, 1876, and 68, 1877, A. G. O.

APPROPRIATIONS.

	For support of National Cemeteries.	For pay of superin- tendents.
Act of July 28, 1866.....	\$50,000 00	
Act of February 22, 1867.....	700,000 00	
Fiscal year 1869-'70, act March 3, 1869.	600,000 00	
Fiscal year 1870-'71, act July 15, 1870..	300,000 00	
Fiscal year 1871-'72, act March 3, 1871.	200,000 00	
Fiscal year 1872-'73 { act May 18, 1872. } { act June 6, 1872.. }	300,000 00	
Fiscal year 1873-'74, act March 3, 1873.	275,000 00	
Fiscal year 1874-'75, act June 16, 1874.	150,000 00	
Fiscal year 1875-'76, act March 3, 1875..	150,000 00	
Fiscal year 1876-'77, act July 24, 1876..	125,000 00	*\$57,750 00
Fiscal year 1877-'78, act November 21, 1877	125,000 00	59,000 00
Fiscal year 1878-'79, act June 18, 1878	100,000 00	59,000 00

* Prior to July 1, 1876, superintendents of National Cemeteries were paid by the Pay Department.

INTERMENTS.

Who may be interred in National Military Cemeteries :

“Soldiers who shall die in the service of the country.”

(Act approved July 17, 1862. G. O. 91, A. G. O., 1862.)

“Soldiers of the United States who fell in battle or died of disease in the field and in hospital during the war of the rebellion.” (Resolution approved April 13, 1866. G. O. 62, A. G. O., 1866.)

“*Be it enacted, &c.,* That from and after the passage of this act all soldiers and sailors honorably discharged from the service of the United States, who may die in a destitute condition, shall be allowed burial in the National Cemeteries of the United States.” (Approved, June 1, 1872. G. O. 40, A. G. O., 1872.)

“*Be it enacted, &c.,* That honorably discharged soldiers, sailors, or marines, who served during the late war either in the regular or volunteer forces, dying subsequent to the passage of this act, may be buried in any National Cemetery of the United States free of cost, and their graves shall receive the same care and attention as the graves of those already buried. The production of the honorable discharge of the deceased shall be authority for the superintendent of the cemetery to permit the interment.” (Approved, March 3, 1873. G. O. 47, A. G. O., 1873.)

The Executive appears to have no discretion as to the class of persons to be admitted to National Cemeteries,

as Congress has designated (sec. 4878, Revised Statutes) who may be buried therein, namely :

“All soldiers or marines, dying in the service of the United States, or dying in a destitute condition after having been honorably discharged from the service, or who served during the late war either in the regular or volunteer forces, may be buried in any National Cemetery free of cost.” (Decision of Secretary of War, September 11, 1877.)

When officers and soldiers die at temporary camps, or on detached service, and their bodies are not claimed by parents or parties who have a natural right to them for proper interment, the immediate commanding officer will cause the body to be decently coffined and transported for burial at the expense of the Quartermaster's Department to the nearest regular fort, barrack, or National Cemetery, the property of the United States, unless in the judgment of such commanding officer burial at the place of death be proper and right. A report in each case to be made to the Adjutant General of the Army. (G. O. 43, A. G. O., 1877.)

HEADSTONES.

In the arrangement of the National Cemeteries, established for the burial of deceased soldiers and sailors, the Secretary of War is hereby directed * * * “to cause each grave to be marked with a small headstone, or block, with the number of the grave inscribed thereon, corresponding with the number opposite to the name of the party, in a register of burials to be kept at each cemetery and at the office of the Quartermaster-General, which shall set forth the name, rank, company, regiment, and date of death of the officer or soldier; or, if unknown, it shall be so recorded.” (Sec. 1, act of February 22, 1867. G. O. S, A. G. O., 1867.)

“*Be it enacted, &c.*, That section one of an act entitled ‘An act to establish and to protect National Cemeteries,’ approved February twenty-second, eighteen hundred and sixty-seven, be amended as follows: ‘The Secretary of War shall cause each grave to be marked with a small headstone, with the name of the soldier and the name of his State inscribed thereon, when the same are known, in addition to the number required to be inscribed by said section; and he shall, within ninety days from the passage of this act, advertise for sealed proposals of bids for the making and erection of such headstones, which advertisements shall be made for sixty days successively in at least twenty newspapers of general circulation in the United States, and shall call for bids for the doing of said work, in whole or in part; and upon

the opening of such bids the Secretary of War shall, without delay, award the contracts for said work to the lowest responsible bidder or bidders, in whole or in part; and said bidders shall give bond to his satisfaction for the faithful completion of the work.'” (Approved June 8, 1872. G. O. 65, A. G. O., 1872.)

Appropriated to provide for the erection of headstones upon the graves of soldiers in the National Cemeteries, \$200,000. (Act approved June 10, 1872. G. O. 52, A. G. O., 1872.) Unexpended balance continued and rendered available for its original purposes. (Act approved March 3, 1875. G. O. 24, A. G. O., 1875.)

The headstones required by an act entitled “An act to establish and protect National Cemeteries,” approved February twenty-second, eighteen hundred and sixty-seven, and the act amendatory thereof, approved June eighth, eighteen hundred and seventy-two, shall be of durable stone, and of such design and weight as shall keep them in place when set; and the contract for supplying the same shall be awarded by the Secretary of War, after sixty days’ advertisement in ten newspapers of general circulation, to some responsible person or persons whose samples and bids shall in the greatest measure combine the elements of durability, decency, and cheapness; and the sum of one million dollars is hereby appropriated for said purpose out of any money in the Treasury not otherwise appropriated; and the Secretary of War shall first determine for the various cemeteries the size and model for such headstones, and the standard of quality and color of the stone to be used, and bids shall be made and decided with reference thereto; and contracts may be made for separate quantities of such headstones; and the contracts made under this act shall

provide for furnishing and setting all the said headstones, and shall not in the aggregate exceed the sum hereby appropriated. (Act approved March 3, 1873. G. O. 44, A. G. O., 1873.)

Be it enacted, &c., That the Secretary of War is hereby authorized and directed to have erected in the National Cemetery at Salisbury, N. C., a suitable granite monument to the memory of the twelve thousand Union soldiers who died in the prison-pen at that place and whose remains are buried in trenches in that cemetery; and the sum of ten thousand dollars, or so much thereof as may be necessary, is hereby appropriated for this purpose out of any money in the Treasury not otherwise appropriated. (Approved March 3, 1873. G. O. 47, A. G. O., 1873.)

CARE AND MAINTENANCE.

The National Cemeteries are to be venerated as the resting-places of the noble dead of the nation, whose memory the people desire to honor by making their graves beautiful, and by preserving them from injury or desecration.

Superintendents will not attempt to keep all the walks and drives free from vegetation, but will allow them generally to be covered with grass, which must, however, be closely cut and well weeded. When the gutters are not paved with brick or other material they also will be allowed to grow over with grass.

When Bermuda or other strong-rooted creeping grasses can be obtained they make excellent revetting for the gutters and covers for the walks and drives, when kept closely cut.

When the gutters are paved, grass and weeds must be kept out of them, and great attention paid to keep them free from all obstructions, and the outlets and culverts open.

Superintendents are required to be very particular in keeping the lodges neat and in good order, and to have the office in a condition to receive visitors at all times; and, generally, superintendents are at all times required to endeavor to keep the National Cemeteries in good order in every particular.

The filling up of the sunken graves should generally be done in the early spring; and by careful attention to

the resodding, these graves may be well clothed with green turf by the end of May.

Superintendents will take particular pains to have the grass on the grave-plats cut often and neatly during the growing season, and will see that all coarse weeds are kept down and not allowed to go to seed.

Lawn-mowers should be applied for and used for this purpose. (G. O. 66, A. G. O., 1873.)

You will direct all superintendents in the Military Division of the ——— to hereafter state in their monthly reports from April to September, inclusive, under the head of "general remarks," the number of times they have cut the grass on the grave-sections during the month, and whether with lawn-mower or scythe, and the number of days each cutting has occupied. Similar information will be furnished with regard to grassed walks and drives, and vacant land within the cemetery inclosure.

You will instruct the local officers to see that these instructions are complied with before forwarding the report. (Circular Q. M. G. O., July 18, 1877.)

In the selection of trees or shrubs for cultivation in any cemetery, the nature of the soil and character of the climate should be duly considered.

Many trees and plants which flourish in a cold climate cannot with any degree of success be cultivated where the season of hot, dry weather is prolonged and frost and snow are unknown; nor can tropical plants, without great expense for artificial protection, be propagated in the more northern latitudes.

As a rule, it will be found that the best ornamental

or shade trees for cemeterial purposes are those indigenous to the climate and soil of the locality in which the cemetery is located; though, to add to the variety, it is frequently desirable to procure from other sections such species as can, without much labor, be made to grow with reasonable success. It is in the selection of these that judicious care should be taken.

Nearly all trees can be raised from the seed, and experiments with a very great variety can in this manner be made at little expense. The plants or trees thus grown will be much more likely to live than those transplanted from nurseries or from the forest.

As to the proper time for transplanting, no month or season can be claimed as more likely to be followed by good results than another. It should not, however, be attempted in very hot or dry weather; and whenever it is undertaken the work should be well and faithfully done.

In transplanting evergreens, it is probable that the best success may be expected if the work be done in the spring at the North and in the fall at the South. In making selections from the forest, small trees and such as have not been too much shaded should be chosen.

In all cases as much of the tree's native soil as circumstances will permit should be removed with it, and the roots disturbed as little as possible.

In transplanting evergreens special care should be taken that the roots be not long exposed to the sun or wind, and, when planted, the soil about them should be well covered with leaves or some kind of mulch.

It has been asserted that in transplanting a tree its position with respect to the cardinal points should be preserved. This may not be important, but its observ-

ance can easily be secured by marking the north side of the trees before removal, and restoring it to its original position when planting.

In preparing the ground, the holes should be sufficiently large and deep to admit of a considerable quantity of rich subsoil to be deposited therein before the tree is placed in position; but in no case should a tree be planted deeper than when in its place before removal.

Transplanting is but the first step toward cultivation. For a long time the trees or plants need constant attention.

They are to be protected from the cold, the drought and the ravages of destroying insects.

The soil around them should be kept loosened and mulched (*i. e.*, covered with straw or leaves to protect the tree from the heat of the sun, which dries it too much), when practicable, and in dry seasons the roots of the young and smaller trees should be watered.

They should be frequently inspected, and every effort made to destroy or prevent the accumulation of insects which threaten or infest them.

Whatever success may attend the efforts to beautify the cemeteries by the planting and cultivation of trees, much must, of course, depend upon circumstances; but still more depends upon the exercise of good judgment, diligence, patience, and perseverance.

Much time and money have already been spent upon this feature of the cemeteries, and in some cases with satisfactory results.

A few of the superintendents have given special attention to this branch of their duties. Their labors have been richly rewarded.

The treatise on this subject recently furnished from

this office (Fuller's "Forest Tree Culturist") should be carefully studied by the superintendents, who are expected to familiarize themselves with matters pertaining to this branch of their duties, and the necessity for renewed efforts in this direction is enjoined upon all who may have the care of National Cemeteries placed in their hands.

In all the cemeteries there should be a small collection of the fruit-trees which thrive best in the neighborhood, and especially of those which, like cherries and pears, walnuts and hickory-nut trees, grow into well-proportioned and graceful sizes and shapes. Among the climbers about the lodge and ornamental shrubbery, most useful vines, as the native grapes (Isabella, Catawba, Concord, and Delaware), should have a place. (Circular Q. M. G. O., September 22, 1874)

SIR: The following extract from the annual report of the officer in charge of National Cemeteries is furnished for your information :

"The soil at many of the cemeteries is very poor and will require a great deal of cultivation to bring it into the required condition. I think that in many instances, perhaps, too much attention has been given to the cultivation of flower-beds. A few flowers about the lodge, and, perhaps, at one or two other prominent points, may be desirable, but it is recommended that floriculture in the National Cemeteries be exceedingly limited, for the present, at any rate. It is expensive not only in the original cost of the plants, but in the amount of labor which subsequent cultivation necessarily entails, which care is apt to be bestowed at the cost of neglecting the really important work of keeping the grave-

sections in good order. A rich, well-kept sward, and graceful shade-trees and evergreens, are of paramount importance, and to them the cultivation of flowers should be invariably subordinate."

I concur with Captain Rockwell, and you will please cause his views as above expressed to be duly carried into effect at the cemeteries under your charge, by giving the necessary instructions to the several superintendents.

Where the soil is poor a *judicious* and economical system of fertilizing should be resorted to. If the cemetery is large this work should be done gradually, a portion each season, and the fertilizing should be kept up from year to year, until a good sod is obtained. Where a cemetery is adjacent to a military post, arrangements should be made to utilize the manure from the government stables for this purpose. (Circular Q. M. G. O., October 8, 1875.)

The following is an extract from a report of Mr. James Gall, jr., civil engineer, in regard to the Vicksburg National Cemetery :

"The organization of labor at Vicksburg is very effective, and might be introduced with good results at some of the large cemeteries. The cemetery is divided into districts, and one man assigned to each, whose duty it is to mow and otherwise keep in good condition his particular section during the entire season, and who is held strictly responsible for the proper performance of this work. The system was introduced at my suggestion last season and has been found to work admirably, more and better work being accomplished than when the men worked in gangs of three and four. Each man

is made to feel the responsibility of his position, and that what he does can be seen and appreciated, and tries to do his best. The superintendent gave a silver medal last season to the best mower, and the winner seems as proud of it as if it had been received for college honors."

The plan of apportioning the labor, as adopted at Vicksburg, would probably work to advantage at other large cemeteries. You will therefore cause it to be introduced in some of the National Cemeteries where two or more laborers are employed during the growing season; especially in the larger cemeteries—Nashville, Stone River, Andersonville, Marietta, Beaufort, &c. (Circular Q. M. G. O., January 31, 1877).

SUPERVISION, MANAGEMENT, AND INSPECTION.

The whole subject of National Cemeteries is hereby placed under the Quartermaster-General. The records, &c., pertaining to that subject, heretofore kept in the office of Secretary of War will be turned over to the Quartermaster-General. (G. O. 68, A. G. O., 1876.

Upon the recommendation of the Quartermaster-General, the correspondence between his office and the officers of the Army who are on duty in charge of National Cemeteries will hereafter pass through the usual regular military channels.

Military commanders will exercise the same supervision over National Military Cemeteries within the geographical limits of their commands as over other military posts or establishments not specially excepted.

The military cemeteries in the District of Columbia, and at Arlington and Alexandria, Va., are, however, attached to the Quartermaster's principal depot of Washington, and will form no part of the Division of the Atlantic. These will be the only exceptions.

The civil engineers and the civil agents specially employed by the Quartermaster-General will continue to make their reports direct to the Quartermaster-General.

All military officers having to do with cemeteries will report through the usual regular military channels. The correspondence and monthly reports of superintendents

of National Military Cemeteries will follow the same line. (G. O. 79, A. G. O., 1876.)

The annual inspections of National Cemeteries required by law will be made by officers of the Inspector-General's Department in the course of their tours of inspection. (G. O. 68, A. G. O., 1876.)

Officers visiting National Cemeteries under their charge, for the purpose of inspection, will report result of such inspection to the Quartermaster-General, through the usual channels. (Circular Q. M. G. O., January 27, 1877.)

Officers will render to the Quartermaster-General monthly statements of disbursements of the appropriation for National Cemeteries on blanks furnished from Quartermaster-General's Office. (Circular Q. M. G. O., December 1, 1873.)

SIR: You will cause to be kept by each superintendent of the National Cemeteries, a record of all disbursements made on account of their respective cemeteries, showing for what purpose, and when the expenditure was made, to whom paid, &c.

They should also keep an inventory of all public property in their possession, and make quarterly returns therefor to the officer accountable for the same. (Circular Q. M. G. O., October 26, 1876.)

Hereafter, officers serving in the Quartermaster's Department who have government cemeteries under their charge or within their jurisdiction will provide the superintendents of the same with such tools, common

articles of office-furniture, stationery, &c., as may be necessary to the proper discharge of their duty; and such officers will be held accountable for keeping the superintendents properly supplied.

All quartermaster's stores and camp and garrison equipage at the various National Cemeteries will be borne on the returns of the commissioned officer doing duty in the Quartermaster's Department, under whose charge or within whose district such cemeteries are. He will transfer them to his successor when relieved, taking his receipts therefor.

He will hold each superintendent directly responsible to himself, by proper receipts, for the public property in his charge. (Circular Q. M. G. O., November 25, 1867.)

ORDNANCE OFFICE,

WAR DEPARTMENT,

Washington, February 5, 1869.

SIR: I have to acknowledge your reference of Brevet Colonel Blunt's letter of 23d ultimo, asking for information in relation to cannon and projectiles issued to him for National Cemeteries, in reply to which I have to state that it will be necessary for him to make return to this bureau for such guns, &c., as he may have received, and to close his return by expending the property, as "issued to (naming the cemetery) for ornamental purposes."

Respectfully, your obedient servant,

T. J. TREADWELL,

Brevet Lieutenant-Colonel and

Major of Ordnance, in charge.

Bvt. Maj. Gen. M. C. MEIGS,

Quartermaster-General United States Army.

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OFFICE OF NATIONAL CEMETERIES,

Washington, D. C., February 25, 1875.

Civil engineers of the Quartermaster's Department, on duty in connection with the National Military Cemeteries, will, upon visiting such cemeteries on official business, make a report on the general condition of affairs there in addition to, and separate from, any report they may have to make relative to the special object calling for such visit.

The retained copies of the superintendent's recent monthly reports should be looked at, and the Engineer's opinion given upon any suggestions that may be contained therein; where repairs of any character are reported, as required, the Engineer should state whether, in his judgment, the same are necessary; estimate their probable cost and at the same time explain to the superintendent how they should be done, but not order any work thereon till authorized by the Quartermaster-General.

The general condition of the buildings, grounds, graves, drainage, shrubbery, &c., should be observed and reported upon; also whether the laboring force is sufficient, or more than is actually required.

These reports should be addressed to the Quartermaster-General, and forwarded through the local officer in charge.

A. F. ROCKWELL,

*Captain and A. Q. M., U. S. A.,**In charge of National Cemeteries.*

Approved :

M. C. MEIGS,

Quartermaster-General, Bvt. Maj. Gen., U. S. A.

RULES AND REGULATIONS.

A copy of the following act of Congress shall be kept posted at the entrance, and in several other conspicuous places, in each cemetery :

SEC. 3. *And be it further enacted*, That any person who shall willfully destroy, mutilate, deface, injure, or remove any monument, gravestone, or other structure, or shall willfully destroy, cut, break, injure, or remove any tree, shrub, or plant within the limits of any of said National Cemeteries, shall be deemed guilty of a misdemeanor, and upon conviction thereof before any district or circuit court of the United States within any State or district where any of said National Cemeteries are situated, shall be liable to a fine of not less than twenty-five nor more than one hundred dollars, or to imprisonment of not less than fifteen nor more than sixty days, according to the nature and aggravation of the offense. And the superintendent in charge of any National Cemetery is hereby authorized to arrest forthwith any person engaged in committing any misdemeanor herein prohibited, and to bring such person before any United States commissioner or judge of any district or circuit court of the United States within any State or district where any of said cemeteries are situated for the purpose of holding said person to answer for said misdemeanor, and then and there shall make complaint in due form. (Act approved February 22, 1867. G. O. 64, A. G. O., 1867.)

Visitors are expected to be orderly and civil, and are by law prohibited from cutting, breaking, removing, or injuring any tree, shrub, or plant within the cemeteries.

Each superintendent is required to preserve good order and decorum within the bounds of the cemetery under his charge; and should any persons persist in disorderly or improper conduct after being warned to desist, they will be ordered out, and, if necessary, put out of the cemetery.

To permit cattle or other domestic animals, whether public or private, to run loose, or to be picketed, on the burial sections in the National Cemeteries is strictly prohibited.

No superintendent will be allowed to keep pigs or cows in a National Cemetery, nor will any superintendent be allowed to keep such animals housed or penned within thirty feet of the inclosure of such cemetery.

The keeping of a reasonable number of fowls may be permitted, provided they are not allowed to scratch up the grounds or injure the grave-plats. (G. O. 66, A. G. O., 1873.)

Information having been received of the desecration of soldiers' graves by holding picnic parties in a National Cemetery, and by vending refreshments therein, it is hereby ordered that hereafter no such practices shall be allowed in any National Cemetery, nor on any adjoining ground within the control of the United States.

Visitors will not be allowed in the National Cemeteries before sunrise or after sunset. No refreshments will be taken into these cemeteries.

In National Cemeteries where driving is permitted, the speed must be confined to a walk. If it is found difficult

to enforce this rule at any cemetery the gates will be closed over the carriageway and all driving prohibited.

These orders will be conspicuously posted at the main entrance of each National Cemetery, and will be rigidly enforced by the superintendents. (G. O. 80, A. G. O., 1875.

The Quartermaster-General has been informed that there is a tendency on the part of some superintendents of National Cemeteries to monopolize as a living-room the room designated and intended for an office for the reception of visitors. The attention of superintendents should be called to paragraph XII of the Regulations for National Cemeteries, which requires them to keep the office in condition to receive visitors at all times.

This portion of the lodge is built exclusively for use of visitors, and the families of superintendents have no right to occupy it; they should enter it only to clean and sweep it.

Visitors wishing to enter the office should be made to feel by the surroundings that they are *not* intruding upon the domestic arrangements of the superintendent—that they are entering a room set apart especially for their accommodation.

You will cause to be placed near the main entrance of each National Cemetery in the division of the ——— a wooden tablet bearing the following inscription :

“Visitors are invited to enter the office in the superintendent's lodge, where a register is kept, and where information concerning this cemetery will be cheerfully furnished.”

Application should be made for “Visitors' Registers,” for such cemeteries as are not already supplied with them. (Circular Q. M. G. O., January 23, 1877.)

It is inferred from occasional reports which reach this office that at several of the National Cemeteries the national flag is often not displayed when it should be.

The excuse sometimes given is that a storm is *expected*, or that the flag is worn out or the halyards broken or that the superintendent has "gone to town."

The flag should be up when it does not actually storm, even if it has to be raised and lowered several times during the day.

Timely requests should be made for new flags and halyards before the old ones become unserviceable.

When a flag-staff is blown down or otherwise rendered unserviceable, the case should be promptly reported and steps taken to erect a new pole immediately upon receipt of the necessary authority.

The desire and intention is that the flag should be kept flying from sunrise to sunset, excepting when it storms. (Circular Q. M. G. O., January 24, 1878.)

Superintendent _____,

National Military Cemetery _____

SIR: In accordance with instructions from the Secretary of War, you are directed not to settle any bills on account of the United States for the National Cemetery under your charge unless you have been provided with public funds for that purpose.

(Circular Q. M. G. O., January 22, 1874.)

SUPERINTENDENTS.

APPOINTMENTS.

Be it enacted, &c., That the Secretary of War is hereby authorized to select the superintendents of the National Cemeteries from meritorious and trustworthy soldiers, either commissioned officers or enlisted men of the Volunteer or Regular Army, who have been honorably mustered out or discharged from the service of the United States, and who may have been disabled for active field-service in the line of duty. (Act approved May 18, 1872. G. O. 51, A. G. O., 1872.)

The superintendents of the National Cemeteries shall "receive for their compensation from sixty to seventy-five dollars per month," to be determined by the Secretary of War. They are not considered as enlisted men, but are appointed by the Secretary of War. They are not entitled to clothing or subsistence, or money in lieu of either, and are not subject to deduction on account of Army Asylum. (G. O. 51, A. G. O., 1872.)

Superintendents of National Cemeteries being civilians, and now paid by the Quartermaster's Department as other civil employes thereof, the following regulations from the Secretary of War are promulgated for the information and guidance of all concerned :

I. In view of the responsibility attached to the position of superintendent, and his not being generally under

the direct supervision of a superior officer, it is of great importance that none but men of excellent character and fair abilities should be appointed.

Applicants must therefore fulfill the following conditions, viz :

1st. They must have served in the Army of the United States, either regular or volunteer, and must have been disabled for active field service *in the line of duty*, but *the degree of their present disability must not be such as to impair their efficiency in charge of cemeteries.*

2d. They must be of steady, sober, and correct habits.

3d. They must have a fair degree of intelligence and education, and must be able to write legibly.

II. All applications for the appointment of Superintendent should be addressed to the Quartermaster-General of the Army, and be accompanied by testimonials of responsible persons in support of the above requirements. They must be in the handwriting of the applicant, and must give his full name, length of service, the company and regiment he last served in, date and cause of his discharge, and his present place of residence.

No applications from enlisted men in the Army will be entertained, such men being ineligible under the law.

III. All applicants, before being appointed, will be examined by a board of officers to be convened, by orders from the Adjutant-General's Office, in the department where they may be residing or serving. An applicant having passed a satisfactory examination, will, if selected for appointment, be required to serve a probationary term of six months as an assistant at such cemetery as the Quartermaster-General may designate before being definitely appointed.

Applicants thus selected will be hired by the Quar-

termaster's Department, at the rate of \$40 per month, and furnished with transportation from and to their homes.

If at the expiration of this probationary term the applicant has shown his fitness for the position, he will then be eligible for appointment when a vacancy occurs. Should there be no vacancy at the end of the term, his employment will cease. He will then, in his turn, be duly appointed as vacancies occur.

The number of candidates on probation will at no time exceed four.

* * * * *

VI. Changes in the classification of cemeteries will continue to be made in orders through the Adjutant-General's Office.

(G. O. 37, A. G. O., 1877.)

[General Orders No. 25.]

HEADQUARTERS OF THE ARMY,
 ADJUTANT-GENERAL'S OFFICE,
Washington, May 21, 1878.

By direction of the Secretary of War, the following opinion of the Attorney-General of the United States is published for the information of the Army:

DEPARTMENT OF JUSTICE,
Washington, May 15, 1878.

SIR: By your letter of the 12th ultimo, inclosing a communication from the Judge-Advocate-General dated the 10th of the same month, my attention is directed to the question whether civilian clerks employed by quartermasters, and also superintendents of National Cemeteries, are amenable to the jurisdiction of a court-martial, which question had some time previously been pre-

sented to me by your department for an opinion thereon. I now have the honor to submit the following in response to that inquiry :

On the 2d of June, 1876, my predecessor, Judge Taft, gave an opinion, upon a call from the Secretary of War dated the 5th of May, 1876, in which he held "that the clerk of a quartermaster is so employed in the military service of the United States as to be amenable to the jurisdiction of a court-martial for any violation of the 60th article of the Articles of War."

It would seem, however, that he subsequently contemplated a reconsideration of that opinion ; for I find that on the 6th of December, 1876, a letter was addressed to him by the Secretary of War, asking his advice as to whether superintendents of National Cemeteries are subject to the jurisdiction of a court-martial, in which the Secretary requests this question to be considered in connection with the question of the amenability of a quartermaster's clerk to the same jurisdiction, then "understood to be under re-examination." But nothing further having been done by Judge Taft in connection with the latter question, and he having given no opinion upon the other question mentioned, up to the time of his retirement from office, a renewal of the request for an expression of the views of the Attorney-General, in regard to the amenability to court-martial jurisdiction of both quartermasters' clerks and superintendents of National Cemeteries, was made by the Secretary of War on the 20th of April, 1877. I shall, in dealing with this subject, regard the opinion of my predecessor, above referred to, as if it had been pending here for reconsideration, and had not in fact been reconsidered, when his incumbency as the head of this department terminated.

The question proposed is, whether a quartermaster's clerk (*i. e.*, a *civilian* employed in that capacity) is amenable to court-martial jurisdiction, and whether the superintendent of a National Cemetery is amenable to the same jurisdiction. In other words, are the clerk and the superintendent, or either of them, subject to the Rules and Articles of War?

In passing upon this question, it is proper to inquire, at the outset, whether either or both of the persons described therein belong to any of those classes of persons who are by the *terms of the statutes* in force made liable to military law; as the inclusion of an individual in some one of such classes is essential to bring him under court-martial jurisdiction.

By section 1342 of the Revised Statutes, it is declared that "the *armies* of the United States shall be governed by the following rules and articles"; then follow the articles, known as the Articles of War, numbered from 1 to 128.

Section 1094 declares what "the *Army* of the United States shall consist of." There does not at present exist any military force belonging to or in the service of the United States other than that which is here described. All persons comprehended by this section are, by force of section 1342, subject to the said rules and articles.

Section 4824 subjects all persons admitted into the Soldiers' Home to the same rules and articles, "in the same manner as soldiers in the Army."

Section 4835 subjects all inmates of the National Home for Disabled Volunteer Soldiers to the same rules and articles, "in the same manner as if they were in the Army."

Section 1361 makes all prisoners under confinement in the military prison referred to therein, undergoing sen-

tence of courts-martial, liable to trial and punishment by court-martial under the Rules and Articles of War for offenses committed during the said confinement. The next preceding section (sec. 1360) provides for trial by court-martial, for certain offenses, of any soldier or other person employed in the prison; but the "other person" here mentioned (as appears from section 1347) can only be an enlisted man.

These sections, namely, sections 1094, 4824, 4835, and 1361, indicate those persons who are by the existing statutes *ordinarily* amenable to trial by court-martial under the Rules and Articles of War.

In time of war, or of rebellion, the military jurisdiction is by section 1343 extended over *all* persons "found lurking or acting as *spies*."

Furthermore, by the 63d Article of War, "all retainers to the camp, and all persons serving with the armies of the United States in the field, though not enlisted soldiers, are to be subject to orders, according to the rules and discipline of war." This provision, like that contained in section 1343, comes into play only at a particular time, namely, when the Army is *in the field*; and by virtue thereof persons of that description, though not otherwise subject to military law, become for the time amenable to court-martial jurisdiction for any breach of good order, whether as affecting the discipline of the Army or the rights of individuals. (Benét, p. 29.)

But the question under consideration, as I understand it, does not relate to persons coming within the terms of the 63d Article of War; and it does not call for any further notice of sections 1343, 1361, 4824, and 4835. These sections, together with that article, will accordingly be passed by as unimportant in this connection.

Leaving out of view, then, the provisions just adverted

to, the limits of military jurisdiction under the Rules and Articles of War, with respect to *persons*, is definitely and precisely fixed by section 1094, and the other sections which follow and supplement it, declaring the constituents or components of the various branches or departments of the military establishment described in that section. Persons who do not belong to that establishment—who are not a part of the Army, as thus fixed and defined—are not subject to such jurisdiction, excepting, of course, where they come within the 63d article, or within either of sections 1343, 1361, 4824, and 4835.

This results from the language of section 1342, declaring that the “armies of the United States” shall be governed by the rules and articles thereafter set forth.

The word “armies,” here used, must be understood as now comprehending those persons, and those persons only, who compose the Army as elsewhere defined in the statute (see section 1094). It is true that certain expressions in the Articles of War, descriptive of those who are punishable for offenses therein mentioned, are in themselves, abstractly considered, sufficient to comprehend other persons than the persons just referred to. Thus, by the 60th article, “any person in the military service of the United States” may be tried by court-martial for the offenses described in that article. But the words “in the military service,” there used, are not to be taken in so general a sense as to include all who are employed in connection with that service in any capacity whatever. They must be construed with the provision by which the articles are preceded, and which declares that the latter shall govern “the Armies of the United States.” So construed, they properly include only such as belong to and serve in the Army fixed by law. Hence, the question of the amenability of an in-

dividual to court-martial jurisdiction under that article is not to be determined according to the nature of his employment, that is to say, whether it is military or not, but solely according to the circumstance of his belonging or not belonging to the military establishment as defined in section 1094, &c.

On examination, I find that neither a civilian employed as a quartermaster's clerk nor a superintendent of a National Cemetery belongs to the military establishment as fixed by Congress. The Quartermaster's Department is a branch of that establishment (see section 1094); but the Quartermaster's Department is defined by section 1132, and the clerk of a quartermaster, though in its employ, is not a part of the department as there defined. Superintendents of National Cemeteries are appointed under section 4873, and are by section 4874 required to be selected from meritorious and trustworthy officers or soldiers who have been honorably mustered out or discharged from the military service; but they are not within the military establishment, or impressed with a military character, or in any way made subject to the military code.

I am, therefore, of the opinion that civilian clerks employed by quartermasters and superintendents of National Cemeteries are not liable to trial by court-martial under the Rules and Articles of War.

I have the honor to be, very respectfully,

CHAS. DEVENS,

Attorney-General.

Hon. GEORGE W. MCCRARY,

SECRETARY OF WAR.

By command of General Sherman:

E. D. TOWNSEND,

Adjutant-General.

DUTIES, ETC.

Superintendents will at all times be courteous to visitors and obliging in giving them information; they will also require all persons in their employ to treat visitors with civility.

Superintendents are enjoined to make themselves acquainted, as far as practicable, with the proper mode of cultivating trees and shrubs, and of ascertaining the kinds that do best in their particular locality. They are expected to take a personal interest in the good appearance of the cemeteries under their charge, and to be patient and persevering in their endeavors to bring them into perfect condition.

While superintendents are required to be men of intelligence, and zealous and faithful in the discharge of their public duties, they are also expected to be temperate and moral in their habits, and upright and honorable in their private transactions.

Any officer of the Army having knowledge of the misconduct of a superintendent will report the facts to the Adjutant-General. And it is hereby made the duty of the inspector and of the officer having charge of cemeteries to notice and report the habits and conduct of the Superintendents. (G. O. 66, A. G. O., 1873.)

Superintendents of National Cemeteries will not be permitted, under any circumstances, to act as agents for, or in any manner in the interests of, contractors for

work pertaining to such cemeteries. (Circular A. G. O., May 26, 1874.)

In order to correct an erroneous idea in the minds of some of the superintendents of National Cemeteries, it is hereby announced that they are expected to perform manual labor.

At large cemeteries, where several hands are employed, and at those cemeteries where visitors are numerous, the superintendents may not be able to do much more than supervise the work and give proper attention to visitors; but at the small cemeteries the superintendents should be required, as a general rule, to do most of the work needed to keep their respective cemeteries in good order.

The practice, also, of some superintendents keeping two or more private horses is objectionable, and hereafter no superintendent (without special permission) will be allowed to keep more than one private horse and one cow at a National Cemetery, and then they must be kept in accordance with General Orders No. 66, Adjutant-General's Office, 1873.

The superintendents must bear in mind that the National Cemeteries have not been created for their benefit, but that they are appointed and paid to take good care of the cemeteries.

There are numerous applications for these positions by very worthy men; and notice is now given that idleness or inattention to duty, or a spirit of personal interest—a propensity to make money at the expense or neglect of the cemetery—will be considered a sufficient cause for the discharge of a superintendent and the replacing of him by another. (Circular War Department, April 8, 1876.)

Superintendents will, on the last day of every month, report to the Quartermaster-General, through the regular military channels, the condition of the cemeteries under their charge, noting particularly any damage done or repairs required. Special reports will be made at other times, if occasion demand. (G. O. 64, A. G. O., 1867, as modified by G. O. 79, A. G. O., 1876.)

You are hereby informed that copies of your monthly reports to the Quartermaster General are no longer required for the information of this office. You will, however, on the last day of each month, forward to this office a report of your station and post-office address.

In case you are at any time transferred, or granted leave of absence, you will report to this office the date of your departure from the cemetery and the date you join your new station or return to duty from leave. (Circular A. G. O., September 30, 1876, addressed to superintendents.)

The Secretary of War desires you to instruct the superintendents of National Cemeteries not to pay bills on account of the United States, either for materials, labor, or other services rendered, without they are provided with government funds for that purpose.

Trees, plants, and other articles have frequently been sent to superintendents by express, with the charges of transportation to be collected from them on delivery. In such cases the superintendents have felt bound to pay the bills, and have had to wait sometimes long, and write often, before being reimbursed.

The laborers employed in the National Cemeteries are often poor men, who need their pay as soon as due, to

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support their families, and who find it a great hardship to have to wait two or three weeks beyond the expiration of the month for their pay. In such cases superintendents have frequently advanced money, or made themselves responsible for bills contracted by such laborers, and trouble and loss have sometimes grown out of these transactions.

The Secretary of War therefore requests you to instruct officers making disbursements on account of National Cemeteries to be particularly careful to have funds on hand in season to pay all authorized laborers, and to make these payments with as little delay as possible. He also directs that when articles are hereafter sent by express to superintendents, the charges be paid, or arrangements be made beforehand to make the payment on the return of the superintendent's receipts for the articles sent. (Letter of War Department to Quartermaster-General, January 16, 1874.)

PAY AND ALLOWANCES.

Superintendents of the National Cemeteries shall receive for their compensation from sixty dollars to seventy-five dollars per month, according to the extent and importance of the cemeteries to which they may be respectively assigned, to be determined by the Secretary of War; and they shall also be furnished with quarters and fuel, as now provided at the several cemeteries. (Section 2, act approved May 18, 1872. G. O. 51, A. G. O., 1872.)

In cases where lodges have not been erected, quarters will be assigned by special authority of the War Department. (G. O. 18, A. G. O., 1874.)

Allowance of fuel is as follows :

From May 1 to August 31, one-half cord of wood per month or its equivalent in coal.

From September 1 to April 30, one cord of wood per month, or its equivalent in coal, with one-fourth increase between 36th and 43d degrees N. latitude. (G. O. 18, A. G. O., 1874.)

The following is established as a standard list of office-furniture, garrison equipage, &c., authorized to be issued to superintendents of National Cemeteries when on duty at their stations, viz :

One office-desk ; one bed-sack ; six common chairs ; one letter-book, received ; two pine tables ; one letter-

book, sent; one cylinder stove; one water-pail; one ax; one iron bunk; one hatchet, and one lantern. (G. O. 102, A. G. O., 1868.)

A newly-appointed superintendent will be allowed pay from and including the date of his acceptance of his appointment. The rate of pay will be governed by the grade of the cemetery to which he is assigned. Any unnecessary delay, however, in reporting at his station, after such acceptance, will be reported to this office.

In case of change of station, a superintendent is entitled to pay at the rate established for his *new* station from and including the date when relieved at his old station. The relief will not be construed as commencing with the date of the order changing the station, but from the date when the superintendent transfers the charge of his cemetery to his successor.

Persons hired temporarily as *acting* superintendents or *keepers* will be paid from the appropriation for National Cemeteries. (Circular Q. M. G. O., February 16, 1878.)

COMPILATION

OF

LAWS, ORDERS, OPINIONS, INSTRUCTIONS, ETC.,

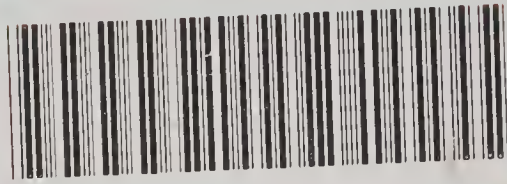
IN REGARD TO

NATIONAL MILITARY CEMETERIES.

WAR DEPARTMENT,
QUARTERMASTER-GENERAL'S OFFICE,
Washington, D. C., June 22, 1878.

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